UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.15/1997/13
13 March 1997

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Sixth session
Vienna, 28 April-9 May 1997
Agenda item 8*

USE AND APPLICATION OF UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE

Administration of juvenile justice

Report of the Secretary-General

Summary

Pursuant to Economic and Social Council resolution 1996/13, the present report provides an overview of information received from Governments on their administration of juvenile justice and, in particular, their contributions to the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice. Drawing on those contributions, a group of experts met at Vienna from 23 to 25 February 1997 and elaborated a draft Programme of Action on Children in the Criminal Justice System, which is contained in the annex to the present report.

*E/CN.15/1997/1.

V.97-21501T

CONTENTS

	Paragraphs	Page
INTRODUCTION	1-5	2
I. VIEWS OF MEMBER STATES	6-27	3
II. ACTION TAKEN BY THE SECRETARIAT	28-37	9
III. ACTION REQUIRED BY THE COMMISSION	38-39	10
Annex. Draft Programme of Action on Children in the Criminal Justice System		11
A. Aims, objectives and basic considerations		11
B. Plans for the implementation of international standards and norms in juvenile justice		12
C. Plans concerned with child victims and witnesses		17

INTRODUCTION

1. The present report was prepared pursuant to Economic and Social Council resolution 1996/13 on the administration of juvenile justice, in which the Council called upon Governments to make effective use and application of international standards in the administration of justice and, to that end, provide for effective legislative and other mechanisms. Governments were also called upon to include in their national development plans the administration of justice as an integral part of the development process and, to that end, to allocate adequate resources for improving the administration of juvenile justice.

2. In the same resolution, the Council requested the Secretary-General to organize, in cooperation with the Government of Austria, an expert group meeting on the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice.

3. The Council also decided that the Commission on Crime Prevention and Criminal Justice at its sixth session should consider the draft programme of action on juvenile justice.

4. Accordingly, the Secretary-General invited Member States to submit to the Secretariat their contributions to the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice and, in particular, to identify areas to be addressed in greater detail, providing any relevant information in that connection.

5. The present report contains a summary of the information received from Member States, as well as action taken by the Secretariat in the area of juvenile justice. Annexed to the report is a draft Programme of Action on Children in the Criminal Justice System, as elaborated by an expert group meeting, which was held at Vienna from 23 to 25 February 1997, thanks to the provision of extrabudgetary resources by the Government of Austria for that purpose.

I. VIEWS OF MEMBER STATES

6. Views on the elaboration of a programme of action in juvenile justice and further information on this subject were received from the following 22 States: Argentina, Austria, Belarus, Colombia, Cuba, Cyprus, Denmark, Finland, France, Guatemala, Holy See, Japan, Malta, Mexico, Paraguay, Poland, Philippines, Qatar, Slovakia, Spain, United States of America and Uruguay.

7. Argentina welcomed the initiative to develop a programme of action on juvenile justice and hoped that it would give particular attention to the custodial detention of children and juveniles who were not in conflict with the law. This concern was based on the fact that some legal systems allowed for a child who was a victim of a crime or, simply, a child living in unfavourable socio-economic conditions to be placed in custody, without any time-limit being applied to such custody and without any clear distinction being drawn between this practice and that applied in cases of conflict with the law. Further, Argentina suggested that the establishment of a database should be incorporated into the programme of action in order to explore the relationship between children and juveniles in the penal system.

8. Austria, referring to the expert group meeting on the development of a programme of action, emphasized that there was a need for close cooperation, as juvenile justice should be given priority internationally, regionally and nationally, including within the framework of United Nations system-wide action. Austria noted that the group had included experts from various relevant United Nations entities, in particular, the Crime Prevention and Criminal Justice Division of the Secretariat, the United Nations High Commissioner for Human Rights/Centre for Human rights, the United Nations Children's Fund (UNICEF) and the Committee on the Rights of the Child. Drawing on the results of the meeting, Austria stated that the programme was to provide a framework to implement, *inter alia*, the Convention on the Rights of the Child (General Assembly resolution 44/25, annex), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33, annex), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112, annex), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex), as well as to facilitate assistance to States parties in the effective implementation of the Convention and related instruments. Austria expressed its hope that the draft programme of action would find the support of the Commission at its sixth session, which would enable the Division to advance specific implementation projects.

9. Belarus stated that a law regulating the legal status of children in society had been enacted. Besides other safeguards, the law aimed at protecting children during investigation, prosecution and trial, and ensured that detention or arrest of a child was considered as a measure of last resort. Parents of the child or persons acting in their stead, as well as organs of the Public Prosecutor's Office had to be informed immediately of the child's detention. The law provided for the establishment of special juvenile courts and laid down guarantees to protect the rights of the child during detention in special education facilities, as well as for obligatory participation of a legal counsel or teacher during the inquiry and investigation. The primary objective of placing children in such facilities was rehabilitation. Separation of children from detained, arrested or convicted adults was ensured by the law. Further, Belarus noted that under criminal legislation, the fact of being a juvenile offender constituted a mitigating circumstance in itself. The age of criminal responsibility was fixed at 16 years of age. Persons aged 14 and 15 years at the time of committing a crime were considered criminally responsible only in respect of murder or other particularly serious offences. The legislation governing the sentencing of persons aged under 18 years at the time of committing a crime limited deprivation of liberty to a period of 10 years. Courts were required to consider the possibility of correcting the accused minor by imposing educational measures, which were not considered a criminal sanction. The length of time spent at the special educational facilities of the Ministry of Education was three years. Should the judicial organs decide that educational measures alone were not sufficient, juveniles would serve their sentences in the correctional labour colonies of

the Ministry of Internal Affairs, in which general education was offered. However, the difficult socio-economic situation of Belarus had a detrimental effect on conditions for juveniles in correctional labour colonies. In particular, the number of juveniles in such establishments exceeded that permitted by public health standards. In Belarus, there had been isolated instances of infringements of the legislation governing juvenile sentencing. All publicized cases were fully investigated and corrective action was taken.

10. Colombia reported that as regards juvenile crime, crimes against property were a particular problem owing to the poverty and marginality of a significant proportion of juveniles. Gang criminality was becoming the major form of crime in the country's most densely populated urban centres. The most common offence committed by minors was petty theft, accounting for 38.7 per cent of total offences by minors, followed by theft, at 31.1 per cent, and aggravated theft, at 14.6 per cent (amounting to a total of 84.4 per cent for theft). Offences against the person account for around 8.6 per cent of juvenile crime. These figures point to a trend towards violent behaviour of a precocious kind in adolescence, not to mention the new phenomenon of abduction by 17-year-olds (0.3 per cent), which indicated that young people were being recruited by organized crime groups. Owing to the current system of dealing with juvenile offenders both in the courts and at the stage of rehabilitation, minors were being used by criminals to commit crimes. Colombia recorded a total of 14,673 offences committed in 1994 by juvenile offenders between the ages of 17 and 20, which accounted for 20.74 per cent of the total number of offences committed in Colombia that year and brought before the ordinary courts. Colombia was of the view that the supremacy of the rights of children meant that it was imperative that their sociolegal status should be recognized.

11. Cuba reported that in an effort to apply the international standards and norms, resources had been allocated to improve the administration of juvenile justice, even though the country's economic situation had limited resources available for that purpose. Cuba also mentioned various legislative measures that had been taken in the past to ensure appropriate treatment of juveniles in conflict with the law. The Government noted that the juvenile justice system had a threefold focus on prevention, evaluation and re-education. Supporting the elaboration of a United Nations programme of action to promote the effective use and application of international standards and norms in juvenile justice, Cuba suggested that the following points should be incorporated into such a programme:

(a) Juveniles should be dealt with outside the scope of criminal law, as well as the court system. Instead, there should be a system of care that fully respects the legal rights and guarantees of the child, and which sets out a policy of prevention, care, education and correction, since the treatment of juveniles is essentially an educational task;

(b) The measures adopted to deal with juveniles must be broad-based, ranging from the strengthening of the educational role of parents to placement in reform schools or re-education centres;

(c) The legislation governing the care of juveniles must be inspired by an integral view of treatment of the child, based on a coordinated, coherent and unified system involving the cooperation of existing educational and law enforcement structures.

12. In Cyprus, the increase in instances of juvenile delinquency indicated a problem that could be spotted in the way modern families were functioning. There were provisions for a juvenile court that was to sit in a different building or room from that in which the ordinary sittings of the district court were held, or on different days or at different times from such sittings. Its jurisdiction included criminal cases against young persons and children, except in cases where they were co-accused with adults. In order to protect young offenders from the harmful influence of adult co-accused, juveniles were separated from the adults. Social services had to be informed whenever a young person was being prosecuted. Public participation in court hearings were restricted to the parties directly involved in the trial. According to the Juvenile Offenders Law of Cyprus, the court had

a wide range of discretion on how to react to juvenile delinquency, including: (a) dismissing the charge; (b) dealing with the case under the provisions of the law relating to the probation of offenders; (c) committing the offender to the care of a relative or other fit person; (d) sending the offender to a reform school; and (e) ordering the offender to pay a fine or to restore the damages to which he or she was liable. Only as a last resort and after having been persuaded that there was no other alternative, the court may also sentence the offender to imprisonment. The guardianship order had proven to be the most successful measure to prevent a juvenile offender from committing crime again. For a certain period of time, this order allowed the court to receive regular reports from social workers on the development of a juvenile and, upon review of the report, the court could provide guidance to the young person. However, because of the heavy caseload of many judges, the appropriate follow-up to the cases was not always secured. Cyprus felt that this measure needed improvement, particularly as regards more effective personal contacts between the juvenile and the social worker, who also needed more proper training. Further, Cyprus suggested that judges specialized in juvenile justice should deal exclusively with juvenile delinquency, as it was difficult for judges who mainly deal with adult criminals to respond to juvenile delinquency with sufficient leniency. Cyprus considered that institutionalization of young offenders was an inappropriate response in many cases, since it made reintegration of juveniles into society difficult. Stigmatization of juveniles should be avoided. As was the case in the United Kingdom of Great Britain and Northern Ireland, community services could prove to be a more appropriate response to juvenile delinquency.

13. Denmark stated that, owing to lack of resources, the Danish authorities were not in a position to provide information on the administration of juvenile justice.

14. Finland considered that Council resolution 1996/13 was of the utmost importance, given, on the one hand, the recent debate on children as victims of crime, especially on the abuse of children, and, on the other hand, the role of children as perpetrators of crime. The Finnish Parliament was debating a government bill on juvenile penalties that would provide for completely new types of sanction for juveniles under 18 years of age. The sanctions would include unpaid work such as community service and other chores, as well as surveillance that aimed at improving the social skills of the juvenile. The enforcement of penalties required close cooperation between different authorities. Information obtained from the experiment will be used for assessing cooperation between courts, probation and after-care administration, social welfare authorities and the police, and for seeking ways to improve cooperation in the administration of juvenile justice.

15. France referred to various measures taken by the Government to prevent violent acts in schools. Departmental plans of security were in force which allowed the police, the national education system and other associations to adhere to a protocol that provided for concrete action to prevent violence in schools. In addition, information was provided to teachers, including suggestions on how to confront violent delinquency in schools. Teachers may also receive some help on the subject from universities. Regarding prevention of recidivism, alternative measures to avoid custodial treatment were in place. In order to assist victims and, in particular, the child victim, 32 houses of justice were established. Further, campaigns to prevent juveniles from falling into drug abuse were developed, including the involvement of police anti-drug trainers. In addition, in urban localities marked by social conflict, local groups including the mayor, school directors and the police commissioner were established under the guidance of the prosector. The groups have the mandate to provide local treatment of delinquents and to develop alternative measures, such as penal mediation and restitution by juveniles.

16. Guatemala stated that in formulating the measures to be included in a programme of action in juvenile justice, consideration should be given to the existing international treaties, the Convention on the Rights of the Child being the main one in question. Further, the programme of action should ensure that not only purely legal aspects of juvenile justice are taken into account, but also technical expertise, with a view to enabling practitioners to resolve the various problems presented by juveniles. Institutions and legislation could have a

beneficial impact on young people, provided, however, that suitable staff were available. Sound personnel selection policies were necessary, and greater awareness among the staff working with young people regarding the social problems with which they were faced should be fostered through courses, seminars, workshops, fellowships and other means. While institutions dealing with youth affairs existed in Guatemala, they were unable to perform the tasks confronting them. New, modern institutions were needed to provide the necessary assistance to children at risk and the valuable training required to deter juveniles from resorting to delinquency. Further, a new Guatemalan Children and Young People Code will enter into force as of 27 September 1997, bringing the country into line with the international standards and norms.

17. The Holy See stated that juvenile delinquency had many causes, the most important of which was child abandonment. Juvenile criminality often arose from the negative experiences suffered by young people when they were deprived of the affection and warmth of the family. In this context, delinquency was often a child's answer to a world that had forgotten to take care of him or her. In addition, desolate urban areas, unemployment, dropping out of school, the lack of cultural initiatives, consumerism, individualism, egoism and double morality were among the factors causing juvenile delinquency. Laws should ensure that the young people involved in juvenile delinquency were not excluded from society but were rehabilitated. This required compassion and hope. It was necessary to offer to the child an authentic possibility for repentance and amendment, and especially for regaining a positive and constructive relationship with the values and the environment of his or her life. In the view of the Holy See, it would be better to abandon the custodial approach and to work on relationships, education, integration between the family, social services, the community and the law courts. In prison, the idleness and the close contact between minors detained for offences of a less serious nature with those detained for more serious offences had a negative impact on the re-education of young offenders. A long period of detention led to the alienation of the young person from society. Young foreigners and migrants faced particular hardship in prison. An alternative to imprisonment should be developed, such as communities offering a framework for rehabilitation and restitution. It was also necessary to develop bridging initiatives for social integration, such as contracts for professional formation and opportunities for the integration of the child into the workforce, as well as grants for study and training.

18. Japan considered it appropriate to elaborate a programme of action as part of the activities of the United Nations Crime Prevention and Criminal Justice Programme. In its view, the purpose of drafting the programme of action should not be to prepare any new standards on juvenile justice, but rather to promote effective use and application of existing standards and norms in this field. The diversity of legal systems of various States should be duly taken into account, as well as their social and cultural backgrounds. To this end, the evaluation of the process of gathering information on the use and application of standards and norms in juvenile justice may serve as a basis for elaborating a programme of action with global perspective. The results of the information-gathering process may also prove useful in considering possible technical cooperation measures.

19. Malta provided detailed information on its social welfare development programme, which undertook child protection services and supported a help line for abused children and victims of domestic violence. A child crisis centre had been established where abused children were medically examined. In addition, the Ministry for Social Development was formulating a service plan for a secure or semi-secure facility for young offenders. The aim of this facility would be to provide for alternatives to custodial treatment. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty were used as the guiding standards in the planning process for elaborating a country-wide service plan, which was proposed by a multi-disciplinary commission. Further, the Probation of Offenders Act provided for reconciliation between victims and offenders, a programme that required the mutual consent of both parties. The Juvenile Court Act of 1980 provided for safeguards guaranteeing that the deprivation of liberty of juveniles was used only as a measure of last resort. Malta reported that courts preferred to use non-custodial measures, such as community-based correctional methods, probation,

conditional discharge, fines and absolute discharge combined with an admonition. Suspended sentences and probation orders, which included restitution and compensation measures, were becoming more common. In September 1996, a young offender wing was opened, which ensured that juveniles were separated from adults when in detention.

20. Mexico expressed great interest in dealing in a satisfactory way with the issue of juvenile justice. This interest was reflected in its law on the treatment of juvenile offenders, which applied to the Federal District in matters of ordinary jurisdiction, and to all the states of Mexico in matters of federal jurisdiction, and which was in line with the Convention on the Rights of the Child, the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, as well as with the national development plan for the period 1995-2000. This plan provided, *inter alia*, for government programmes and activities in matters relating to general prevention and special prevention for minors. The Government was at the forefront in adopting provisions aimed at protecting children, thanks to the close link between the United Nations system of organizations and the governmental bodies responsible for this sphere of activity. The experience could be of value in drawing up a programme of action involving close interaction between international organizations and Member States. Furthermore, it was important to bear in mind that any action encouraging the use and application of international instruments at the national level involved, first of all, the dissemination of those instruments on a large scale. With regard to the administration of juvenile justice, the information and training activities should focus on the institutions responsible for dealing with cases of anti-social juvenile behaviour, as well as on the lawyers defending minors in such cases.

21. Paraguay reported that it had elaborated a draft project to promote the implementation of the rights of the child. In particular, efforts were being made to ensure training of magistrates of the first instance in order to familiarize them with issues related to the Convention on the Rights of the Child. Campaigns had been designed to inform children about their rights and about the Convention. Also, a national plan of action on the promotion and protection of human rights had been elaborated to ensure harmonization of national legislation and practice with the international human rights instruments, with particular emphasis on the improvement of the prison system for juveniles and adults.

22. Poland considered it important that the programme of action should propose measures aimed at the diversion from the justice system of juvenile cases that were not complex or that caused little or no threat to society. Such diversion could include the participation of extrajudicial authorities, as suggested by guideline 58 of the Riyadh Guidelines. In 1996, Poland had initiated an experimental programme of mediation between the juvenile and the injured person. A qualified mediator, independent from the administration of the justice system, helped the juvenile and the injured person to work out a joint solution to settle the conflict, with a view to teaching the juvenile responsibility for his or her actions and to providing for victim compensation. The Polish Department of Family Matters and Juveniles analysed problems resulting from the different interests of public security, on the one hand, and the specialization of counsels in juvenile cases, on the other hand. Poland wished to present the results of its analysis to the international community. The programme of action should consider further involvement and participation of authorities dealing with social rehabilitation, non-governmental organizations and volunteers in the judicial process. The programme of action should also ensure that stigmatization of juveniles as delinquents was avoided. To this end, it was considered useful to exchange experiences with regard to possible ways of solving the conflict between police effectiveness and stigmatization of juveniles. For example, such a conflict could arise when juveniles were used illegally as police sources of information in criminal milieux. With regard to social rehabilitation, Poland had four years of experience with so-called youth centres for social adaptation. While such institutions were of a corrective character, the stay of a juvenile in the institution was based on the principle of a contract, which specified the terms and conditions of the stay, the goal of the institution in respect of the ward concerned, his or her rights and obligations, as well as the scope of the ward's independence. The project paid special attention to an individual treatment approach, which followed the principles of minimum intervention and "normality of methods". Poland reported that no

separate budget existed for the juvenile justice system, and welcomed the sharing of experience with other countries.

23. The Philippines observed that some measures relating to the administration of juvenile justice had fallen within the purview of the criminal justice system for several years. The experience thus acquired showed the complexity of crime and the need for an ongoing programme of cohesiveness, cooperation and interaction between the different pillars of the system.

24. In Qatar, the law on juveniles provided, *inter alia*, for specific actions to strengthen child care and to prevent juvenile delinquency. The law also provided for rules of procedure for juvenile courts, as well as for the legislative authority to decide on parole for the juvenile.

25. Spain referred to various laws enacted to provide protection for juveniles, including the constitutional law of 15 January 1996, by which the Convention on the Rights of the Child became part of the Spanish Constitution. In addition, the constitutional law provided for an entire catalogue of fundamental rights, with the appropriate refinements in the case of children. The law provided for a series of special obligations for the competent public bodies, authorities or individuals to ensure social protection of children. Further, the new Penal Code of Spain, in force since 25 May 1996, considered persons under the age of 18 to be criminally non-responsible under the Penal Code. The applicable provisions in respect of criminal offences will be as laid down in the future law on the criminal responsibility of minors. In Spain, the criminal legal age was now in line with the constitutional provision and with civil law, and took account of the Convention. In its treatment of the child as a victim, the new Penal Code contained protective provisions, which were viewed favourably as compared with the repealed criminal law. For example, the new Penal Code considered it a specifically aggravating circumstance if the victim was under 12 years of age. With regard to offences against sexual freedom, the new code provided for greater protection in the event of the sexual harassment of minors. Since 1987, the national police force was organizing groups of officers specially trained in the initial treatment of juvenile offenders. The establishment of such groups, in close cooperation with the Public Prosecutor's Office, responded to the need to remove juveniles from the criminal justice system and to develop programmes taking account of the special characteristics of juvenile crime. The measures were taken in response to the Beijing Rules and other international standards, which called for specialization within the police on matters relating to juvenile delinquency.

26. The United States reported that the sobering projections about the future of juvenile violence underscored the need for strong, immediate, well-planned and decisive action to intervene early with efforts to prevent younger children from becoming offenders. At the same time, it was imperative that Member States should respond to that small percentage of juvenile offenders who repeatedly victimized the community and accounted for the vast majority of serious and violent delinquent acts. The United States further stated that it provided leadership, guidance and information on the most effective means of addressing and reducing the impact of juvenile delinquency and violence. Resources were made available to states and localities through programmes of the federal, state and local governments, public and private groups and business and service organizations. The juvenile justice system in the United States was guided by constitutional limitations on federal police powers, with a Federal Juvenile Code for violations of federal law or violations that occurred on federal lands. States and territories established individual juvenile justice systems that included juvenile codes, juvenile and family courts with exclusive jurisdiction over most offences, sentencing authority and detention, corrections, and aftercare programmes. These programmes addressed high-risk juveniles, gender-specific services, minority populations and offenders who committed serious or violent crimes.

27. Uruguay suggested that the main areas that should be addressed by the proposed programme of action were as follows: the development and guaranteeing of respect for the rights of children in conflict with the law; reconciliation of the role of the State in punishing crime with social policies in favour of children; strengthening

of non-judicial bodies with regard to the treatment of minor social offences committed by juveniles; and the instrumental use of children for the purposes of transnational crime.

II. ACTION TAKEN BY THE SECRETARIAT

28. The Council, in its resolution 1996/13, encouraged States to make use of technical assistance offered by the United Nations programmes of advisory services and technical assistance in order to strengthen national capacities and infrastructure in the field of the administration of justice, and called upon Governments to include in their national development plans the administration of justice as an integral part of the development process.

29. The Secretariat has accordingly undertaken a number of activities relating to the above-mentioned mandates of the Council.

30. In particular, advisory services for strengthening juvenile justice systems as well as technical assistance were provided to Bangladesh, Bosnia and Herzegovina, Brazil, Burkina Faso, Romania and South Africa. Details of those missions are reflected in the report of the Secretary-General on technical cooperation and coordination of activities (E/CN.15/1997/17).

31. Furthermore, representatives of the Division served as resource persons in a number of interregional and regional consultations, seminars and workshops. For example, the Division was involved in regional consultations on the commercial sexual exploitation of children, organized by the European Commission, the International Criminal Police Organization, UNICEF and End Child Prostitution in Asian Tourism, and held at Bangkok from 17 to 19 January 1996. At the Innocenti Global Seminar on Children and Families of Ethnic Minorities, Immigrants and Indigenous Peoples, organized by UNICEF and held at the International Child Development Centre at Florence, Italy from 7 to 15 October 1996, the representative of the Division informed 34 programme managers of UNICEF about relevant juvenile justice matters, especially with regard to children of ethnic and other minorities. Further, the Division chaired two workshops on juvenile justice and on the Convention on the Rights of the Child at the International Interdisciplinary Course on Children's Rights, organized by the University of Gent, Belgium, from 29 June to 6 July 1996. The Division also participated in a meeting on juvenile justice organized by Save the Children Fund (United Kingdom), co-sponsored by Rädda Barnen International (Save the Children Federation) (Sweden), and held at Mbabane, Swaziland, from 28 to 31 October 1996. The meeting was designed to train trainers in law enforcement and the judiciary with respect to the application of United Nations standards and norms in juvenile justice. For further details, see the report of the Secretary-General on the use and application of United Nations standards and norms in crime prevention and criminal justice (E/CN.15/1997/14).

32. The Division also participated in international meetings and conferences, for example by chairing a panel workshop on laws designed to protect children against commercial sexual exploitation, conducted at the World Congress against the Commercial Sexual Exploitation of Children, held at Stockholm from 26 to 31 August 1996. The workshop aimed at discussing national, regional and international laws designed to protect children from becoming victims of sexual exploitation and to safeguard the best interests of the children testifying in court in cases of child abuse. The Division also attended the African Seminar on Children in Conflict with the Law, organized by Defense for Children International and held at Dakar from 12 to 17 January 1997. The Seminar focused on the implementation of standards and norms in juvenile justice concerning trial, alternatives to trial, imprisonment and alternative measures.

33. In accordance with General Assembly resolution 45/112, the Division finalized a manual on United Nations standards and norms in juvenile justice, highlighting the relevant juvenile justice instruments and giving guidance on how best to use them, taking into account different legal systems and practices.

34. The Council, in its resolution 1996/13, requested the United Nations High Commissioner for Human Rights to continue to pay special attention to the subject of juvenile justice and, in close cooperation with the Division, UNICEF and the Committee on the Rights of the Child, to develop strategies to ensure effective coordination of technical cooperation programmes in the field of juvenile justice. In this connection, the attention of the Commission is drawn to a report of the Secretary-General on children and juveniles in detention (E/CN.4/1997/26), prepared pursuant to Commission on Human Rights resolution 1996/32, on human rights in the administration of justice, in particular of children and juveniles in detention. The situation of juveniles deprived of their liberty in 16 States is reflected in the report.

35. In its resolution 1996/13, the Council invited the Secretary-General to strengthen system-wide coordination of technical assistance projects in the field of juvenile delinquency prevention and the establishment or improvement of juvenile justice systems, and also invited the Secretary-General, UNICEF, the United Nations Development Programme (UNDP) and the World Bank, as well as other international and regional organizations and non-governmental organizations, to place emphasis on technical assistance projects in the field of juvenile justice.

36. Accordingly, the Division, with a view to the expert group meeting on the elaboration of the programme of action annexed to the present report, identified possible elements for such a programme, in particular with respect to an efficient framework for undertaking joint technical assistance projects in juvenile justice, thus providing adequate follow-up to the recommendations of the Committee on the Rights of the Child to States parties to the Convention on the Rights of the Child. Those elements were disseminated to all participants prior to the meeting and formed the basis for the development of the programme of action.

37. Finally, in pursuance of Council resolution 1996/13, the Division organized, in cooperation with the Government of Austria, the expert group meeting, referred to in paragraph 5 above, on the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice.

III. ACTION REQUIRED BY THE COMMISSION

38. The Commission is invited to consider the draft programme of action annexed to the present report, with a view to proposing it for adoption by the Economic and Social Council.

39. The Commission may wish to focus on ways and means of implementing and following up the programme of action, if adopted, thus assisting Governments in the improvement of their juvenile justice systems.

Annex

DRAFT PROGRAMME OF ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM

1. Pursuant to Economic and Social Council resolution 1996/13, the present draft Programme of Action was developed by a group of experts, meeting at Vienna from 23 to 25 February 1997, with the financial support of the Government of Austria. In developing the draft Programme of Action, the group of experts took into account the views expressed and the information submitted by Governments.

2. Twenty-nine experts from 11 States in different regions, representatives of the United Nations High Commissioner for Human Rights/Centre for Human Rights, UNICEF and the Committee on the Rights of the Child, as well as observers from non-governmental organizations concerned with juvenile justice, participated in the meeting.

A. Aims, objectives and basic considerations

3. The aims of the draft Programme of Action is to provide a framework to achieve the following:

(a) To implement the Convention on the Rights of the Child, with regard to children in the context of the administration of juvenile justice, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (hereinafter referred to as United Nations standards and norms in juvenile justice), and other related instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex);

(b) To facilitate assistance to States parties for the effective implementation of the Convention on the Rights of the Child and related instruments.

4. In order to ensure effective implementation of the Programme of Action, improved cooperation between Governments, relevant entities in the United Nations system, non-governmental organizations and members of the civil society is essential.

5. Implementation of and follow-up to the Programme of Action will be based on the monitoring process of the Convention on the Rights of the Child, including the recommendations of the Committee on the Rights of the Child, in accordance with Article 45 of the Convention.

6. The draft Programme of Action is based on the principle that the responsibility to implement the Convention clearly rests with the States parties thereto.

7. In the implementation of the Programme of Action at both the international and national levels, consideration should be given to the following:

(a) Respect for human dignity, compatible with the four general principles underlying the Convention, namely: non-discrimination, including gender-sensitivity; upholding the best interests of the child; right to life, survival and development; and respect for the views of the child;

(b) A rights-based orientation;

(c) A holistic approach to implementation through maximization of resources and efforts;

(d) The integration of services on an interdisciplinary basis;

(e) Participation of children and concerned sectors of society;

(f) Empowerment of partners through a developmental process;

(g) Sustainability without continuing dependency on external bodies;

(h) Equitable application and accessibility to those in greatest need;

(i) Accountability and transparency of operations;

(j) Pro-active responses based on effective preventive and remedial measures.

8. Adequate resources (human, organizational, technological, financial and information) should be allocated and utilized efficiently at all levels (international, regional, national, provincial and local) and in collaboration with relevant partners, including Governments, United Nations entities, and national non-governmental organizations, professional groups, the media, academic institutions, children and other members of the civil society, as well as other partners.

B. Plans for the implementation of international standards and norms in juvenile justice

1. Measures of general application

9. The importance of a comprehensive and consistent national approach in the area of juvenile justice should be recognized, with respect for the interdependence and indivisibility of all rights of the child.

10. Measures relating to policy, decision-making, leadership and reform should be taken, ensuring that:

(a) The principles and provisions of the Convention on the Rights of the Child and the United Nations standards and norms in juvenile justice are fully reflected in national and local legislation policy and practice, in particular by establishing a child-oriented juvenile justice system that guarantees the rights of children, gives highest priority to the prevention of the violation of the rights of children, promotes children's sense of dignity and worth, and fully respects their age, stage of development and their right to participate meaningfully in, and contribute to, society;

(b) The provisions of the above-mentioned instruments are made widely known to children in language accessible to children. In addition, procedures should be established to ensure that each and every child is provided with the relevant information on his or her rights set out in those instruments, from their first contact with the criminal justice system;

(c) The public and the media are educated in the understanding of the spirit, aims and principles of justice centred on the child, in accordance with the United Nations standards and norms in juvenile justice.

2. Specific targets

11. States should ensure the effectiveness of their birth registration programmes. In those instances where the age of the child involved in the justice system is unknown, measures should be taken to ensure that the true age of a child is ascertained by independent and objective assessment.

12. Notwithstanding the age of criminal responsibility, civil majority and the age of consent as defined by national legislation, States should ensure that children benefit from all their rights, as guaranteed to them by international law, in particular those set forth in articles 3, 37 and 40 of the Convention.

13. Particular attention should be given to the following points:

(a) A comprehensive child-centred juvenile justice process should be ensured;

(b) Independent expert panels should be established to review existing and proposed juvenile justice laws and their impact on children;

(c) No child under the age of criminal responsibility alleged to have committed an offence should be brought within the criminal justice system;

(d) Where a child, for whatever reason, is brought before a court other than a juvenile court, the child should be accorded all the rights of a child and, in particular, should not be treated as an adult, and should be afforded an age-appropriate process, in accordance with articles 3, 37 and 40 of the Convention.

14. A review of existing and proposed procedures should be undertaken and initiatives, such as diversion, be developed to avoid recourse to the criminal justice systems for young persons accused of an offence. In this regard, appropriate steps should be taken to make available throughout the State a broad range of alternative measures at the pre-arrest, pre-trial, trial and post-trial stages, in order to protect children from the negative effects for them of being drawn into the criminal justice system. Informal mechanisms for the resolution of disputes in cases involving a child offender should be utilized, including mediation and restorative or traditional justice practices, particularly processes involving victims. States should ensure that alternative measures comply with the Convention, the United Nations standards and norms in juvenile justice, as well as other existing standards and norms in crime prevention and criminal justice, such as the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110, annex), with special regard to ensuring respect for due process rules in applying such measures and for the principle of minimum intervention.

15. States should remove all obstacles to a child's regular and private access to his or her legal representative.

16. Priority should be given to setting up agencies and programmes to provide free legal and other assistance to children, such as interpretation services, and, in particular, to ensure that the right of every child to have access to such assistance from the moment the child is detained is respected in practice.

17. In accordance with the Riyadh Guidelines, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a child.

18. Particular attention should be paid to children in need of special protection measures, children working or living on the streets, children permanently deprived of a family environment, disabled children and children of ethnic minorities, immigrants and indigenous populations.

19. The placement of children in closed institutions should be reduced. Such placement of children should only take place in accordance with the provisions of article 37 (b) of the Convention and as a matter of last resort and for the shortest period of time. Corporal punishment in the child justice and welfare systems should be prohibited.

20. The United Nations Rules for the Protection of Children Deprived of their Liberty and article 37 (d) of the Convention also apply to any public or private setting from which the child cannot leave at will, including welfare, special protection and education facilities.

21. In order to maintain a link between the detained juvenile and his or her family and community, and to facilitate his or her social reintegration, it is important to ensure easy access to institutions where children are deprived of their liberty by relatives and persons who have a legitimate interest in the child.

22. An independent body to monitor and report regularly on conditions in custodial facilities should be established. Monitoring should take place within the framework of the United Nations standards and norms in juvenile justice, in particular the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. States should permit children to communicate freely and confidentially with the monitoring bodies.

23. States should respond positively to requests from humanitarian, human rights and other concerned organizations for access to custodial facilities.

24. In relation to children in the criminal justice system, full account should be taken of concerns raised by intergovernmental and non-governmental organizations, in particular systemic issues, including inappropriate admissions and lengthy delays that impact on juveniles deprived of their liberty.

25. All persons having contact with, or being responsible for, children in the criminal justice system should receive education and training in human rights, the principles and provisions of the Convention as well as other United Nations standards and norms in juvenile justice as an integral part of their training programmes. Such persons include: police and other law enforcement officials; judges and magistrates, prosecutors, lawyers and administrators; prison officers and other professionals working in institutions where children are deprived of their liberty; and health personnel, social workers, peace keepers and other professionals concerned with juvenile justice.

26. Given that children's rights are guaranteed to every child within the jurisdiction of the state, there is a particular need for immigration officers and officers working with refugees and asylum seekers to receive such training.

27. In the light of existing international standards, mechanisms should be established to ensure a prompt, thorough and impartial investigation into allegations against officials of violation of the fundamental rights and freedoms of children. States should ensure that those found responsible are duly punished.

3. Measures to be taken at the international level

28. Juvenile justice should be given priority internationally, regionally and nationally, including within the framework of the United Nations system-wide action.

29. There is an urgent need for close cooperation between all bodies in this field, in particular, the Crime Prevention and Criminal Justice Division, the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, UNICEF, UNDP, the Committee on the Rights of the Child, the International Labour Organization, the United Nations Educational,

Scientific and Cultural Organization (UNESCO) and the World Health Organization. In addition, the World Bank and other international and regional financial institutions and organizations as well as non-governmental organizations and academic institutions are invited to support the provision of advisory services and technical assistance in the field of juvenile justice. Cooperation should therefore be strengthened in particular with regard to research, dissemination of information, training, implementation and monitoring of existing standards, as well as in the provision of technical advice and assistance programmes, for example by making use of existing international networks on juvenile justice.

30. The effective implementation of international standards through technical cooperation and advisory service programmes should be ensured by giving particular attention to the following aspects related to protecting and promoting human rights of juveniles in detention, strengthening the rule of law and improving the administration of the juvenile justice system:

(a) Assistance in legal reform;

(b) Strengthening national capacities and infrastructures;

(c) Training programmes for police and other law enforcement officials, judges and magistrates, prosecutors, lawyers, administrators, prison officers and other professionals working in institutions where children are deprived of their liberty, health personnel, social workers, peace keepers and other professionals concerned with juvenile justice;

(d) Preparation of training manuals;

(e) Preparation of information and education material to inform children about their rights in juvenile justice;

(f) Assistance with the development of information and management systems.

31. Close cooperation should be maintained between the Crime Prevention and Criminal Justice Programme and the Department of Peace-keeping Operations in view of the relevance of the protection of children's rights in peace-keeping operations, which should appropriately address also the problems of children and youth as victims and perpetrators of crime in peace-building and post-conflict or other emerging situations.

Mechanisms for the implementation of technical advice and assistance projects

32. In accordance with articles 43, 44 and 45 of the Convention, the Committee on the Rights of the Child reviews the reports of States parties on the implementation of the Convention. According to article 44 of the Convention, these reports shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Convention.

33. States parties to the Convention should provide in their initial and periodic reports comprehensive information, data and indicators on the implementation of the provisions of the Convention and the United Nations standards and norms in juvenile justice.*

---

*See CRC/C/5 and CRC/C/58 for *Guidelines on reporting*. See CRC/C/46, pp. 33-39, for a summary of discussions on the topic of the special thematic day of the Committee on the Rights of the Child on the administration of juvenile justice.

34. As a result of the process of examining the progress made by States parties in fulfilling their obligations under the Convention, the Committee may make suggestions and general recommendations to the State party to ensure full compliance with the Convention (in accordance with article 45 (d) of the Convention). In order to foster the effective implementation of the Convention and to encourage international cooperation in the area of juvenile justice, the Committee transmits, as it may consider appropriate, to specialized agencies, UNICEF and other competent bodies any reports from States parties that contain a request, or indicate a need, for advisory services and technical assistance, along with observations and suggestions of the Committee, if any, on those requests or indications (in accordance with article 45 (b) of the Convention).

35. Accordingly, should a State party report and the review process by the Committee reveal any necessity to initiate reform in the area of juvenile justice, including through assistance by the United Nations technical advice and assistance programmes or those of the specialized agencies, the Committee suggests that the State party should request such assistance, including from the Division, the United Nations High Commissioner for Human Rights/Centre for Human Rights and UNICEF.

36. In order to provide adequate assistance in response to those requests, a coordination panel on technical advice and assistance in juvenile justice will be established, to be convened at least annually by the Secretary-General. The panel will consist of representatives from the Division, the United Nations High Commissioner for Human Rights/Centre for Human Rights, UNICEF, UNDP, the Committee on the Rights of the Child and the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network and other relevant United Nations entities, as well as other interested intergovernmental, regional and non-governmental organizations, including international networks on juvenile justice and academic institutions involved in the provision of technical advice and assistance.

37. Prior to the first meeting of the coordination panel, a strategy should be elaborated for addressing the issue of how to activate further international cooperation in the field of juvenile justice. The coordination panel should also facilitate the identification of common problems, the compilation of examples of good practice and the analysis of shared experiences and needs, which in turn would lead to a more strategic approach to needs assessment and to effective proposals for action. Such a compilation would allow for concerted advisory services and technical assistance in juvenile justice, including an early agreement with the Government requesting such assistance, as well as with all other partners having the capacity and competence to implement the various segments of a country project, thus ensuring the most effective and problem-oriented action. This compilation should be continuously developed in close cooperation with all parties involved. It will take into account the possible introduction of diversion programmes and measures to improve the administration of juvenile justice, to reduce the use of remand homes and pre-trial detention, to improve the treatment of juveniles deprived of their liberty and to create effective reintegration and recovery programmes.

38. Emphasis should be placed on formulating comprehensive prevention plans, as called for by the Riyadh Guidelines. Projects should focus on strategies to socialize and integrate all children and young persons successfully, in particular through the family, the community, peer groups, schools, vocational training and the world of work. These projects should pay particular attention to children in need of special protection measures, such as children working or living on the streets or children permanently deprived of a family environment, disabled children or children of minorities, immigrants and indigenous populations. In particular, the specific needs of children working or living on the streets require innovative responses that avoid institutionalization and formal intervention by law enforcement and judicial authorities and criminalization of the children concerned.

39. The strategy will also set out a coordinated process for the delivery of international advisory services and technical assistance to States parties to the Convention, on the basis of joint missions to be undertaken,

whenever appropriate, by staff of the different organizations and agencies involved, with a view to devising longer-term technical assistance projects.

40. Important actors in the delivery of advisory services and technical assistance programmes at the country level are the United Nations resident coordinators, with significant roles to be played by the field offices of the United Nations High Commissioner for Human Rights, UNICEF and UNDP. The vital nature of the integration of juvenile justice technical cooperation in country planning and programming, including through the United Nations country strategy note, is emphasized.

41. Resources must be mobilized for both the coordinating mechanism of the coordination panel and regional and country projects formulated to improve observance of the Convention. Some resources for those purposes will come from existing budgets. However, some of the resources for funding the coordination panel will have to be mobilized from external sources, as will most of the resources for specific projects.

42. The coordination panel may wish to encourage, and in fact be the vehicle for, a coordinated approach to resource mobilization in this area. Such resource mobilization should be on the basis of a common strategy as contained in a programme document drawn up in support of a global programme in this area. All interested United Nations bodies and agencies as well as non-governmental organizations that have a demonstrated capacity to deliver technical cooperation services in this area should be invited to participate in such a process.

Further considerations for the implementation of country projects

43. One of the obvious tenets in juvenile delinquency prevention and juvenile justice is that long-term change is brought about when root causes are addressed rather than when symptoms are treated. For example, excessive use of juvenile detention will be adequately dealt with only by applying a comprehensive approach, which involves both organizational and managerial structures at all levels of investigation, prosecution and the judiciary, as well as the penitentiary system. This requires communication, *inter alia*, with and among police, prosecutors, judges and magistrates, as well as with the relevant authorities inside and outside detention centres. In addition, it requires the will and ability to cooperate closely with each other.

44. To prevent further overreliance on criminal justice measures to deal with children's behaviour, efforts should be made to establish and apply programmes aimed at strengthening social assistance, which would allow for the diversion of children from the justice system, as appropriate, as well as improving the application of non-custodial measures and reintegration programmes. To establish and apply such programmes, it is necessary to foster close cooperation between the child justice, social welfare and education sectors.

C. Plans concerned with child victims and witnesses

45. In accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, States should undertake to ensure that child victims and witnesses are provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance. Measures should be taken to prevent the settling of matters through compensation outside the justice system, which would not be in the best interests of the child.

46. Police, lawyers, the judiciary and other court personnel should receive training in dealing with cases where children are victims. States should establish, if they have not yet done so, specialized offices and units to deal with cases involving offences against children. States should establish a code of practice for appropriate management of cases involving child victims.

47. Child victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.

48. States should ensure that child victims have access to assistance that meets their needs, such as legal aid, protection, secure housing, economic assistance, counselling, health and social services, social reintegration and physical and psychological recovery services. Special assistance should be given to those children who are suffering from the human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS). Emphasis should be placed upon family and community-based rehabilitation rather than institutionalization.

49. Judicial and administrative mechanisms should be established and strengthened where necessary to enable child victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Child victims should be informed of their rights in seeking redress through such mechanisms.

50. Access should be allowed through the judicial system to fair and adequate compensation for all child victims of violations of human rights, including torture and other cruel, inhuman or degrading treatment or punishment, including rape and sexual abuse, unlawful or arbitrary deprivation of liberty, unjustifiable detention and miscarriage of justice. Necessary legal representation to bring an action within an appropriate court, as well as interpretation into the native language of the juvenile, if necessary, should be provided at State expense.

51. Child witnesses need assistance in the judicial and administrative processes. States should improve the situation for children as witnesses of crime in their evidential and procedural law. The rights of the child will remain the cornerstone of all actions taken. Detention of children to ensure their appearance in court should only be ordered as a last resort, and in any event should not be ordered against their will. In accordance with the different law traditions, direct contact should be avoided between the child victim and the offender during the process of investigation and prosecution as well as during trial hearings.

52. States should consider amendments of their penal procedural codes to allow for, *inter alia*, video-taping of the child's testimony and its presentation in court as official pieces of evidence. In particular, police, prosecutors, judges and magistrates should apply more child-friendly practices, for example, with regard to police raids and interviews of child witnesses.

53. The responsiveness of judicial and administrative processes to the needs of child victims and witnesses should be facilitated by:

(a) Informing child victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved;

(b) Encouraging the development of child witness preparation schemes to familiarize children with the criminal justice process prior to giving evidence. Appropriate assistance should be provided to child victims and witnesses throughout the legal process;

(c) Allowing the views and concerns of child victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and in accordance with the relevant national criminal justice system;

(d) Taking measures to minimize delays in the criminal justice process, protecting the privacy of child victims and witnesses and, when necessary, ensuring their safety from intimidation and retaliation.

54. The United Nations Crime Prevention and Criminal Justice Programme, including the institutes comprising the Programme network, the United Nations High Commissioner for Human Rights/Centre for Human Rights, UNICEF, UNDP, the Committee on the Rights of the Child, UNESCO, the World Bank and interested non-governmental organizations should assist Member States, on their request, in developing multidisciplinary training, education and information activities for law enforcement and other criminal justice personnel, including police officers, prosecutors, judges and magistrates.

55. Where children are displaced illegally across borders, States and international organizations should ensure that the true age of the child is ascertained by independent and objective assessment, where this is necessary. If children are to be returned to the country of origin, their safety must be guaranteed by independent monitoring and follow-up. Pending their return to the country of origin, children should not be treated as illegal migrants by the receiving countries, but should receive the same assistance as children in need of special protection measures. Upon the return of the child, the country of origin should treat the children with respect, in accordance with international principles of human rights, and offer adequate family-based rehabilitation measures.